

1

2

3

4

5

6

7

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Michael Joseph Lyons,

NO. C 07-03510 JW

Plaintiff,

**ORDER OF DISMISSAL PURSUANT TO
RULE 41(b) OF FED. R. CIV. P.**

v.

Social Security Administration, et al.,

Defendants.

On July 5, 2007, Plaintiff filed his Complaint with an Application to Proceed in Forma Pauperis. (See Docket Item Nos. 1, 2.) On July 20, 2007, the Court granted Plaintiff's Application; however, the Court dismissed the Complaint with leave to amend. (See Docket Item No. 5.) The Court directed Plaintiff to file an Amended Complaint by August 27, 2007, and noted that if Plaintiff failed to file an Amended Complaint in accordance with the Order, the action would be dismissed with prejudice for lack of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. (Id.)

A district court has the authority to dismiss a case for lack of prosecution pursuant to its inherent authority and Rule 41(b) of the Federal Rules of Civil Procedure. See Link v. Wabash R. Co., 370 U.S. 626 (1962). Rule 41(b) states in pertinent part: "For failure of the plaintiff to prosecute or to comply with these rules or any order of the court, a defendant may move for dismissal of an action or of any claim against the defendant. . . . [A] dismissal under this subdivision . . . operates as an adjudication upon the merits." Fed. R. Civ. P. 41(b). "This power is necessary to

1 prevent undue delay in the disposition of pending cases, docket congestion, and, the possibility of
2 harassment of a defendant." Medeiros v. U.S., 621 F.2d 468, 470 (1st Cir. 1980).

3 To date, Plaintiff has not made any further filing in this case despite it being two months past
4 the deadline the Court set for filing an Amended Complaint. Accordingly, the Court DISMISSES
5 this action pursuant to Rule 41(b) of the Federal Rule of Civil Procedure, which is a dismissal on the
6 merits. Judgment will be entered in favor of all Defendants.

7
8 Dated: October 26, 2007

9
10 JAMES WARE
11 United States District Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Michael Joseph Lyons
3 117 West Beach Street
4 Watsonville, CA 95076

5 **Dated: October 26, 2007**

6 **Richard W. Wiking, Clerk**

7 By: /s/ JW Chambers
8 **Elizabeth Garcia**
Courtroom Deputy